

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

In re:

SEARS HOLDINGS CORPORATION, *et al.*,¹

Debtors.

Chapter 11

Case No. 18-23538 (RDD)
(Jointly Administered)

Re: Docket No. 1731

Obj. Deadline: January 26, 2019 at 4:00 p.m. (ET)

**R.R. DONNELLEY & SONS COMPANY’S OBJECTION TO DEBTORS’
NOTICE OF CURE COSTS AND POTENTIAL ASSUMPTION AND
ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED
LEASES IN CONNECTION WITH GLOBAL SALE TRANSACTION**

R.R. Donnelley & Sons Company (“RRD”), by and through its undersigned counsel, hereby objects (the “Cure Objection”) to the proposed cure amounts (the “Proposed Cure Amounts”) for RRD’s executory contracts listed in the *Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases In Connection With*

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); Sears, Roebuck de Puerto Rico, Inc. (3626); SYW Relay LLC (1870); Wally Labs LLC (None); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); Sears Brands Management Corporation (5365); SHC Licensed Business LLC (3718); and SHC Promotions LLC (9626). The location of the Debtors’ corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

Global Sale Transaction (the “Cure Notice”).² In support of this Cure Objection, RRD respectfully states as follows:

PRELIMINARY STATEMENT

1. According to the Cure Notice, Sears Holdings Corporation and various affiliates (the “Debtors”) may seek to assume and assign the executory contracts with RRD to Transform Holdco, LLC (the “Buyer”). The Proposed Cure Amounts listed in the Cure Notice are \$1,952,337. As of the filing of this Cure Objection, the amount required to cure all monetary defaults (the “RRD Cure Amount”) under the RRD contracts is \$2,041,591.92, comprised of \$2,005,499.99 due as of the October 15, 2018 petition date (the “Petition Date”) and \$36,091.93 in past due amounts for postpetition goods and services. The RRD Cure Amount does not include at least \$815,110.67 that will become due in the ordinary course of business. If the RRD contracts are assumed, the Buyer must be responsible for satisfying these obligations.

OBJECTION

2. On the Petition Date, the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code with this Court. Since the Petition Date, the Debtors have continued to operate and manage their businesses as debtors and debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

3. Prior to the Petition Date, on or about July 1, 2013, RRD and Sears Holdings Publishing Company, LLC. (“Sears Publishing”) entered into that certain Master Purchase Agreement (as amended, the “MPA”), pursuant to which, along with various statements of work

² Docket No. 1731.

issued under the MPA (collectively, the “RRD Contracts”), RRD provides various goods and services to Sears Publishing.³

4. On January 18, 2019, the Debtors filed the Cure Notice⁴ which listed the Proposed Cure Amounts on **Exhibit A**. The Cure Notice lists \$1,952,337 as the Proposed Cure Amounts for the RRD Contracts, which RRD disputes.

5. Prior to assumption of the RRD Contracts, if any, the Debtors are required by section 365(b)(1) of the Bankruptcy Code to cure all outstanding defaults under the RRD Contracts and compensate RRD for any actual pecuniary loss. The Proposed Cure Amounts are incorrect. RRD asserts that the correct cure amount under the RRD Contracts is \$2,041,591.92.

6. RRD reserves the right to amend and/or supplement this Cure Objection, including, without limitation, to include additional amounts that arise or become known to RRD prior to assumption, to add or supplement objections to the Proposed Cure Amounts, and to raise any additional objections to the assumption of the RRD Contracts.

³ The MPA and related statements of work contain confidential information and are not attached to this Cure Objection. The MPA and statements of work will be provided upon written request to RRD’s counsel and execution of a confidentiality agreement.

⁴ The Cure Notice refers to “MKTG – R R DONNELLEY AND SONS COMPANY – LOGISTICS SERVICES AGREEMENT – 2012” and lists Kmart Corporation and Sears Holdings Management Corporation as the Debtor-counterparties. Upon information and belief, the MPA and the agreement referenced in the Cure Notice are the same agreement.

WHEREFORE, RRD respectfully requests that the Court require the Debtors or the Buyer to pay RRD the RRD Cure Amount as a condition to assumption of the RRD Contracts, and grant RRD such other and further relief as the Court deems just and proper.

Dated: New York, New York
January 25, 2019

KELLEY DRYE & WARREN LLP

By: /s/ James S. Carr
James S. Carr
Maeghan J. McLoughlin
101 Park Avenue
New York, New York 10178
Telephone: (212) 808-7800
Facsimile: (212) 808-7897
Email: jcarr@kelleydrye.com
mmcloughlin@kelleydrye.com

Attorneys for R.R. Donnelley & Sons Company

CERTIFICATE OF SERVICE

The undersigned hereby certified that a true and correct copy of the foregoing instrument has been served via electronic mail and/or first class mail, postage pre-paid on this 25th day of January, 2019 upon the parties listed below and electronically via ECF notification upon all parties requesting service via ECF notification:

Sears Holdings Management Corporation
Attn: Rob Riecker (rob.riecker@searshc.com)
Attn: Luke Valentino (luke.valentino@searshc.com)
Attn: Mohsin Meghji (mmeghji@miiipartners.com)
Attn: General Counsel (counsel@searshc.com)
3333 Beverly Road
Hoffman Estates, IL 60179

Weil, Gotshal & Manges LLP
Attn: Ray C. Schrock (ray.schrock@weil.com)
Attn: Jacqueline Marcus (jacqueline.marcus@weil.com)
Attn: Garret A. Fail (garrett.fail@weil.com)
Attn: Sunny Singh (sunny.singh@weil.com)
767 Fifth Avenue
New York, NY 10153

Lazard Frères & Co., LLC
Attn: Brandon Aebersold and Levi Quaintance (project.blue.rx@lazard.com)
30 Rockefeller Plaza
New York, NY 10112

Bank of America, N.A.
c/o Skadden, Arps, Slate, Meagher & Flom LLP
Attn: Paul D. Leake (Paul.Leake@skadden.com)
Attn: Shana A. Elberg (Shana.Elberg@skadden.com)
Attn: George R. Howard (George.Howard@skadden.com)
4 Times Square
New York, NY 10036

Bank of America, N.A.
c/o Berkeley Research Group, LLC
2200 Powell Street, Suite 1200
Emeryville, CA 94608

Wells Fargo Bank, National Association
c/o Choate, Hall & Stewart LLP
Attn: Kevin J. Simard (ksimard@choate.com)
Attn: Jonathan D. Marshall (jmarshall@choate.com)
Two International Place
Boston, MA 02110

Akin Gump Strauss Hauer & Feld LLP
Attn: Philip C. Dublin (pdublin@akingump.com)
Attn: Ira S. Dizengoff (idizengoff@akingump.com)
Attn: Abid Qureshi (aqureshi@akingump.com)
Attn: Sara L. Brauner (sbrauner@akingump.com)
One Bryant Park
New York, NY 10036

Transform Holdco LLC
c/o ESL Partners, Inc.
Attn: Kunal S. Kamalani (kunal@eslinvest.com)
Attn: Harold Talisman (harold@eslinvest.com)
1170 Kane Concourse, Suite 200
Bay Harbor Islands, FL 33154

Cleary Gottlieb Steen & Hamilton LLP
Attn: Christopher E. Austin (caustin@cgsh.com)
Attn: Benet J. O'Reilly (boreilly@cgsh.com)
Attn: Sean A. O'Neal (soneal@cgsh.com)
One Liberty Plaza
New York, NY 10006

Office of the United States Trustee
Attn: Paul Schwartzberg
U.S. Federal Office Building
201 Varick Street, Room 1006
New York, NY 10014

/s/ Maeghan J. McLoughlin
Maeghan J. McLoughlin